

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:) **Case No. 12-70166-JAD**

Bobbi Jo S. Dively,) **Chapter 7**

Debtor)

**James R. Walsh, Esquire, Trustee of the
Bankruptcy Estate of Bobbi Jo S. Dively,**)

Doc. No. ____

Appellant,)

Related to Docket No. 91

v.)

Bobbi Jo S. Dively;)

Sean Dively;)

FEDEX Corporation; and)

Hewitt Associates, LLC,)

Appellees)

**APPELLANT’S STATEMENT OF ISSUES ON APPEAL AND
DESIGNATION OF RECORD ON APPEAL**

COMES NOW the Trustee, James R. Walsh, Esquire (“Appellant”), by and through his counsel, James R. Walsh, Esquire, Kevin J. Petak, Esquire, and Spence, Custer, Saylor, Wolfe & Rose, LLC, and does file the within Appellant’s Statement of Issues on Appeal and Designation of Record on Appeal, upon a cause whereof the following is a statement, to wit:

A. Statement of Issues on Appeal

- I. Whether the Bankruptcy Court erred in denying the motion of James R. Walsh, Trustee (“Trustee”) seeking authority to execute a qualified domestic relations order to effectuate property settlement agreement for want of subject matter jurisdiction when it held that the Debtor possessed a direct property interest in the ex-spouse’s FedEx Corporation retirement plan which in turn excluded the same from being property of the

bankruptcy estate pursuant to 11 U.S.C. §541, notwithstanding the fact that at the time of the filing of the petition for relief, the Debtor merely possessed an interest in the Marriage Settlement Agreement which awarded her, and now the Trustee as successor in interest to the Debtor pursuant to 11 U.S.C. §541, a 50% interest in the ex-spouse's FedEx Corporation retirement plan which had not been reduced to a qualified domestic relations order ("QDRO") prior to the filing of the petition for relief thereby failing to establish the direct property interest in the FedEx retirement plan as of the filing of the petition for relief?

A. Designation of Record on Appeal.

Appellant submits the following designation of record on appeal:

1. Chapter 7 Voluntary Petition
(filed February 22, 2012, at Doc. No. 1);
2. Order Discharging Debtor
(filed May 23, 2012, at Doc. No. 12);
3. Final Decree
(filed May 23, 2012, at Doc. No. 13);
4. Motion to Reopen Chapter 7 Case
(filed April 29, 2013, at Doc. No. 16);
5. Order Granting Motion to Reopen Chapter 7 Case
(filed May 23, 2013, at Doc. No. 21);
6. Motion to Withdraw as Attorney because of Conflict of Interest and Candor to a Tribunal
(filed June 3, 2013, at Doc. No. 24);
7. Order Reopening the case and determining that a Trustee is necessary to ensure efficient administration of case
(filed June 5, 2013, at Doc. No. 26);
8. Trustee withdraws Chapter 7 Trustee's Report of No Distribution
(filed June 6, 2013, at Doc. No. 27);
9. Trustee's Notice of Assets & Request for Notice to Creditors

(filed June 6, 2013, at Doc. No. 28);

10. Application to Employ James R. Walsh, Esquire and Spence, Custer, Saylor, Wolfe & Rose, LLC, as Counsel for the Chapter 7 Trustee (filed June 6, 2013, at Doc. No. 29);
11. Default Order Granting Motion to Withdraw as Attorney (filed July 9, 2013, at Doc. No. 37);
12. Order Granting Application to Employ James R. Walsh, Esq. as counsel for James R. Walsh, Trustee (filed July 9, 2013, at Doc. No. 39);
13. Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement Agreement (filed April 29, 2014, Doc. 45);
14. Hearing on Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement Agreement (filed April 29, 2014, at Doc. No. 46);
15. Stipulation by FedEx Corporation and Between Trustee and Agreed Order Extending Response Date on Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement (filed May 21, 2014, at Doc. No. 49);
16. Order signed on 5/22/2014 approving Stipulation and Agreed Order Extending Response Date (filed May 22, 2014, at Doc. No. 50);
17. Consent Motion to Continue/Reschedule Hearing on Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement (filed June 2, 2014, at Doc. No. 53);
18. Response in Opposition to Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement Agreement (filed June 2, 2014, at Doc. No. 54);

19. Order Granting Motion to Continue/Reschedule Hearing for 7/2/14 at 10:00 a.m. (filed June 3, 2014, at Doc. No. 55);
20. Motion for Pro Hac Vice Admission of Colby S. Morgan (filed June 17, 2014, at Doc. No. 58);
21. Order Granting Motion for Pro Hac Vice Admission of Colby S. Morgan (filed June 24, 2014, at Doc. No. 60);
22. Notice of Appearance and Request for Notice by Mitchell Stuart Bober (filed June 30, 2014, at Doc. No. 64);
23. Hearing Held on 7/2/2014 (filed July 2, 2014, at Doc. No. 65);
24. Order Setting Date Certain For Filing Briefs (filed July 2, 2014, at Doc. No. 66);
25. Supplemental Brief/Memorandum in Opposition to Motion for Authority of Chapter 7 Trustee to Execute Qualified Domestic Relations Order (filed July 23, 2014, at Doc. No. 68);
26. Order signed on 7/29/2014. Court Orders on or before 8/6/14 FedEx to file supplemental brief and Trustee shall file his brief on or before 8/2014. (filed July 30, 2014, at Doc. No. 70);
27. Modified Order Granting Agreed Motion to Extend Time on Supplemental Brief Deadlines (filed August 7, 2014, at Doc. No. 74);
28. Supplemental Brief/Memorandum in Opposition to Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement Agreement (filed August 12, 2014, at Doc. No. 76);
29. Chapter 7 Trustee's Brief In Response to Supplemental and Second Supplemental Brief Filed by FedEx Corporation in Opposition to Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement Agreement (filed August 27, 2014, at Doc. No. 78);

30. Motion for Pro Hac Vice Admission of David P. Knox (filed August 27, 2014, at Doc. No. 80);
31. Order Granting Motion for Pro Hac Vice Admission of David P. Knox for FedEx Corporation (filed August 28, 2014, at Doc. No. 82);
32. Memorandum Opinion (filed December 4, 2014, at Doc. No. 84);
33. Order Setting Rule to Show Cause. Show Cause Hearing January 6, 2015. (filed December 4, 2014, at Doc. No. 85);
34. Response of Chapter 7 Trustee to the Order of Court Dated December 4, 2014 Setting Rule to Show Cause (filed December 28, 2014, at Doc. No. 88);
35. Hearing Held on 1/6/2015. (filed January 7, 2015, at Doc. No. 90);
36. Order Denying Motion for Authority of Chapter 7 Trustee to Execute a Qualified Domestic Relations Order to Effectuate Property Settlement Agreement (filed January 7, 2015, at Doc. No. 91);
37. Notice of Appeal (filed January 16, 2015, at Doc. No. 93);
38. Expedited Transcript Requested by James R. Walsh for hearing held on 1/6/2015. (filed January 20, 2015, at Doc. No. 95); and
39. Notice of Filing of Transcript (filed on January 26, 2015, at Doc. No. 100).

Respectfully Submitted,

Spence, Custer, Saylor, Wolfe & Rose, LLC

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